

ORIGINAL



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ARIZONA CORPORATION COMMIS

UTILITY COMPLAINT FORM

Investigator: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2011 - 95116

Date: 5/10/2011

Complaint Description: 08A Rate Case Items - Opposed
N/A Not Applicable

Complaint By: First: Dennis Last: Price

Account Name: Emerald Springs Homeowner's Association

Home: (000) 000-0000

Street: [REDACTED]

Work:

City: Ehrenberg

CBR:

State: AZ Zip: 85334

Is:

Utility Company: D11-Emerald Springs, LLC

Division: Sewer

Contact Name: [REDACTED]

Contact Phone: [REDACTED]

Nature of Complaint:

DOCKET No. WS 20794A-11-0140

Emerald Springs Homeowner's Association is against utility adjudication.

Emerald Springs Homeowner's Association

P.O. Box 1125

Ehrenberg, AZ 85334-1125

Mr. Gary Pierce, Chairman © () IV

Arizona Corporation Commission

Commissioner's Wing

1200 W. Washington

Phoenix, AZ 85007-2996

Ret: Complaint regarding sewer provider.

March 14, 2011

Arizona Corporation Commission

DOCKETED

MAY 11 2011

DOCKETED BY

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2011 MAY 11 P 2:10

RECEIVED

Dear Chairman Pierce:

The Emerald Springs Homeowners Association (HOA) is writing this letter to the Commission to express our concerns about the Commission's oversight of our public service corporation delivering sewer services to the Emerald Springs subdivision in Ehrenberg, AZ.

On January 14, 2011 the HOA's board of Directors received the attached E-mail from Mr. Henry Melendez dba DII-Emerald Springs, LLC. Mr. Melendez provides sewer services to our subdivision pursuant to the attached contract signed July 10, 2004. In the E-mail Mr. Melendez states: "DII-Emerald Springs, LLC, has applied to the Arizona Corporation Commission for an adjudication that it is not a public service corporation (public utility) and therefore not under their jurisdiction." The Board is adamantly opposed to this proposal. From his statement above, it is apparent that Mr. Melendez believes that DII-Emerald Springs, LLC is classified as a public service corporation. He has not, however complied with Commission rules governing public service corporations. In a

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letter to Mr. Melendez dated February 18, 2011 by Mr. Wesley Van Cleve of the Commission's Legal Division, Mr. Melendez "is in violation of Commission Rules and Arizona Statutes."

The Commission, until recently, was unaware that Dil-Emerald Springs LLC was acting as a public service corporation and supplying sewer services to our subdivision. Dil-Emerald Springs, LLC has not applied for the requisite Certificate of Convenience and Necessity and has never submitted annual reports to the Utilities Division as required by Arizona Administrative Code (AAC) § R14-2-610-D.4. Oil-Emerald Springs, LLC has increased its rates twice in the past 14 months without the Commission's approval. Its tariffs have never been approved by the Commission. Dil-Emerald Springs, LLC bills the HOA for the sewer fees rather than the individual customers as required by AAC § R14-2-608.D. Consequently, the HOA shoulders the burden of collecting revenues for the utility.

The HOA has expended significant effort and financial resources regarding its relationship with Oil-Emerald Springs LLC. Attached is a letter from our Attorney addressing the most recent issues. Had Oil-Emerald Springs, LLC been regulated by the Commission pursuant to statute and rule, these issues could have been addressed by the Commission at no expense to the customers.

We have spoken with Ms. Vicki Wallace of the Utilities Division and she is well-aware of the litany of statutory and Commission rules with which Oil-Emerald Springs, LLC has refused and/or failed to comply. She is also aware of the issues involving Oil-Emerald Springs, LLC and the Arizona Department of Environmental Quality. From what we understand from Ms. Wallace and is evidenced by the letter from Mr. Van Cleve, Mr. Melendez refuses to comply with Corporation rules and Arizona Statute that require that he be regulated by the Commission. It is obvious that Mr. Melendez and Oil-Emerald Springs, LLC believes they can disregard any statutory and rule requirements by the State of Arizona. This arrogance also extends to their dealings with the HOA. Simply, it appears that Mr. Melendez and Dil-Emerald Springs, LLC believe they can do whatever they want, with no repercussions whatsoever.

All that we ask is that the Commission complies with the law and actively regulates Oil-Emerald Springs, LLC as the public service corporation that it clearly is. The residents of Emerald Springs simply wish to enjoy the consumer protections assured by the Commission.

Due to the animosity that exists between the parties, we do not believe that the issues can be resolved informally. The HOA Board of Directors would, however, participate in mediation through the Commission. Sincerely,

Dennis Price Frank Ghianni John Chianni
President Vice-President Secretary/Treasurer
cc; Brenda Burns, Commissioner
Sandra D. Kennedy, Commissioner
Paul Newman, Commissioner
Bob Stump, Commissioner
Vicki Wallace, Utilities Division

***** Attachment from Law Office of John C. Churchill *****

John C. Churchill

Julie A. Laflenz Parker, Arizona 85344

Faye Peters, Legal Assistant

February 23, 2011

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Henry Melendez
[REDACTED]

Re: Emerald Springs HOA Monthly Sewer Fees

Dear Mr. Melendez,

This law office represents the Emerald Springs Homeowners Association (HOA). On July 10, 2004, the UDA executed an "Agreement Regarding Sewer Services" with Dynamic Financial & Investment Services, Inc., a California corporation, dba Dynamic I-tomes (Dynamic) and it is my understanding that you are the President of Dynamic.

First, you are hereby notified that the HOA will only pay a 10% increase in the monthly sewer service fee. According to the HOA, beginning on or about January 1, 2011, Dynamic raised the monthly sewer service fee by 15%. Section 3(C) of the "Agreement Regarding Sewer Services" states in relevant part: "Thereafter, Dynamic shall be entitled to adjust the monthly sewer service fee annually based on its review of the actual costs of operating the Sewer Plant, provided, however, said monthly sewer service fee shall not be increased by more than ten percent (15%) per twelve (12) month period." I did not make a typo there, the contract itself spells out ten percent and then states (15%). Contract law provides that the numbers as written out control. Thus, any and all annual increases in the monthly sewer service fee may not be more than ten percent (10%).

The HOA, however, paid the 15% increase for the months of January and February 2011. In other words, for January and February 2011, the HOA paid Dynamic \$70.73 on each of the forty-three (43) properties within Emerald Springs when the HOA was only contractually obligated to pay \$67.65 per month. As a result, the overpayment of \$264.88 will be deducted from the HOA's March 2011 sewer service payment.

Second, the HOA will no longer pay monthly sewer service fees for lots 17, 50, and 52. Section 3(B) of the "Agreement Regarding Sewer Services" states in relevant part: "The monthly sewer service fee for each subsequently improved Lot will commence upon issuance of the certificate of occupancy for such Lot by La Paz County." Lots 17, 50, and 52 are unimproved Lots for which the county has not issued any certificates of occupancy. If you are in possession of any evidence to the contrary, please provide me with a copy. The HOA, therefore, beginning with the March 2011 sewer services fee payment, will no longer pay monthly sewer service fees for lots 17, 50, and 52.

Finally, Dynamic is seeking payment for an alleged late fee for the January 1, 2011 invoice for \$304.12. Section 6 of the "Agreement Regarding Sewer Services" states in relevant part, "Each such statement will be due and payable on or before the twenty-fifth (25th) day of the same calendar month." According to the HOA, the January 1, 2011 invoice was paid on January 18, 2011. As a result the HOA will not pay the alleged late fee. If you have any questions or would like to discuss these matters further, please contact me at the mailing address, telephone number, or email address Listed herein.

Sincerely,

Julie A. LaBenz,

Attorney for Emerald Springs BOA

cc: client

*****Attachment from Henry A. Melendez*****

-Original Message-

From: Henry A. Melendez <.. >

To: estreasurer <.. >

Cc: rjjerrells <.. >

Sent: Wed, Jan 12, 2011 8:23 pm

Subject: Sewer regulations

January 12, 2011

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To: Emerald Springs HOA (Board of Directors)

DII-Emerald Springs, LLC, has applied to the Arizona Corporation Commission for an adjudication that it is not a public service corporation (public utility) and therefore are not under their jurisdiction. If the application is approved, the Commission will not regulate the rates we charge the HOA and its members. All complaints concerning rates and service will be handled by the board of directors elected by the members and not specific members.

If the board of directors have any questions about this application or have any objections to its approval, the board of directors may contact the Arizona Corporation Commission's Utilities Division at 1-800-222-7000, or write at 1200 W. Washington, Phoenix1 Arizona 85007.

If you wish to inform the members, please make sure they do not receive the Commission contact information. Any issues from the members should be addressed to the Board directly. The Board members are the only ones to contact the Commission.

Thanks;

Henry A. Melendez, Ph.D.

[REDACTED]

***** Attachment /AGREEMENT REGARDING SEWER SERVICES

This Agreement Regarding Sewer Services (the "Agreement") is effective as of the 10 day of July, 2004, by and between DYNAMIC FINANCIAL & INVESTMENT SERVICES, INC., a California corporation, dba Dynamic Homes ("Dynamic", and the EMERALD SPRINGS HOMEOWNERS' ASSOCIATION, an Arizona nonprofit corporation (the "HOA").

RECITALS:

A. Emerald Springs ("Emerald Springs") is a residential subdivision located in La Paz County, Arizona, consisting of approximately (52) lots (individually referred to as a "Lot").

B. The HOA is the owner's association for Emerald Springs.

C. Approximately nineteen (19) Lots in Emerald Springs are owned by individual lot owners who have constructed homes on their respective lots (the "Individual Lot Owners").

D. DU-Emerald Springs, L.L.C., an Arizona limited liability company ("Dir"), an affiliate of Dynamic, has acquired the remaining Lots in Emerald Springs and intends to develop, market and sell the remainder of the Lots in Emerald Springs after constructing homes thereon.

F. Dynamic is in the process of installing a twenty thousand (20,000) gallon capacity sewer treatment plant (the "Initial Sewer Plant") in order to provide sewer treatment services to the DII Lots in Emerald Springs. Dynamic also intends to construct one (1) or more additional sewer treatment plants (the "Additional Sewer Plants"), if necessary, to accommodate the sewer treatment needs of Emerald Springs Lots. Hereinafter, the Initial Sewer Plant and the Additional Sewer Plants are individually and collectively referred to as the "Sewer Plant".

F. The Existing Lot Owners are currently receiving sewer treatment services from an adjoining property owner on a temporary basis.

G. The Existing Lot Owners wish to terminate such temporary sewer services and, utilize in lieu thereof, the Sewer Plant.

H. Dynamic is willing to allow all Lot owners within Emerald Springs to connect to the Sewer Plant upon the terms and conditions set forth herein,

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1. The HOA is the representative of the Existing Lot Owners and has full authority to enter into this Agreement on behalf of the Existing Lot Owners.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HOA and Dynamic hereby agree as follows:

AGREEMENTS:

1. Recitals. The parties hereby acknowledge the accuracy of the Recitals set forth above.

2. Sewer Plant Dynamic hereby agrees that, upon completion of the Sewer Plant, all owners of Lots in Emerald Springs shall be entitled to connect to the Sewer Plant, including, but not limited to, the Existing Lot Owners and DII, so long as the Sewer Plant has adequate capacity for such Lots. It is anticipated that the Initial Sewer Plant will be in operation by or around July 10, 2004.

3. Fees. The per Lot fees for connection and use of the Sewer Plant shall be as follows:

A. The HOA shall pay to Dynamic, on behalf of each Existing Lot Owner that has not paid a similar sewer connection fee to the temporary sewer treatment provider, a one (1) time connection fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00), upon the execution of this Agreement. Thereafter, the HOA shall pay to Dynamic a one (1) time connection fee of One Thousand Five Hundred and No/1 00 Dollars (\$1,500.00) for each Lot connecting to the Sewer Plant.

B. The HOA shall pay to Dynamic a monthly sewer service fee of Fifty-Five and No/1 00 Dollars (\$55.00) per month for each Existing Lot commencing upon connection to the Sewer Plant. The monthly sewer service fee for each subsequently improved Lot will commence upon issuance of the certificate of occupancy for such Lot by La Paz County.

C. The amount of the monthly sewer service fee will be reviewed by Dynamic after the Initial Sewer Plant has been in service for six (6) months, at which time Dynamic shall be entitled to increase or decrease the monthly sewer service fee either in order to reflect the actual expenses incurred by Dynamic in operating the Sewer Plant. Thereafter, Dynamic shall be entitled to adjust the monthly sewer service fee annually based on its review of the actual costs of operating the Sewer Plant, provided, however, said monthly sewer service fee shall not be increased by more than ten percent (15%) per twelve (12) month period.

4. Maintenance. Dynamic will be responsible for maintenance of the Sewer Plant. The HOA will be responsible for maintenance of the pump, electricity to the pump and the piping between the Sewer Plant and the Lots in Emerald Springs.

5. Insurance. Dynamic shall maintain adequate liability insurance for its ownership and operation of the Sewer Plant.

6. Payment. On or before the tenth (10th) day of each calendar month, Dynamic shall provide the HOA with a monthly statement showing all connection and monthly sewer service fees due from the HOA for the preceding calendar month. Each such statement will be due and payable on or before the twenty-fifth (25th) day of the same calendar month. All connection and sewer service fees due to Dynamic shall be paid by the HOA. The HOA in turn shall be entitled to pass on such charges to the Existing Lot Owners and subsequent Lot owners through the collection of I-BA assessments.

7. Default. In the event of any default by either party of its obligations under this Agreement, the non-defaulting party shall have all rights and remedies available under applicable law. In addition, in the event that the HOA fails to make any payment required pursuant to this Agreement, Dynamic shall have the right to (1) collect a late fee equal to 10% of the payment due, (2) disconnect the Sewer Plant upon thirty (30) days prior written notice if the default is not cured within said thirty (30) day period.

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8. Governing Law. This Agreement shall be governing construed according to Arizona law.

9. Execution. This Agreement may be executed in any number of counterparts¹ each of which shall be deemed an original, but all of which taken together shall be deemed one and the same Agreement. Signatures to this Agreement may be exchanged by telecopy.

End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

Opinion docketed

End of Comments

Date Completed: 5/10/2011

Opinion No. 2011 - 95116
